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SEP 27 2010

Remarks

Amendment to the specification:

Please amend Page 2, first paragraph of the specification was in the application as originally filed in the PCT receiving office. This is not believed to be new matter based on its presence in the initial filing document.

Amendment to the claims:

Please enter the amendment to the claims listed below. The claims were restricted and the elected claims remain in this specification.

In response to paragraph 3 of the office action Claims 19 and 22 were amended in compliance with the Examiner's suggestion in accordance with 37 CFR 1.821(d) Where the description or claims of a patent application discuss a sequence that is set forth in the "Sequence Listing" in accordance with paragraph (c) of this section, reference must be made to the sequence by use of the sequence identifier, preceded by "SEQ ID NO:" in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application.

In response to paragraphs 4 and 5 of the office action Claims 16 -18 were amended in compliance with the Examiner's suggestion to reflect antecedent basis from claim 12.

In paragraph 6 and 7 the Examiner rejected claims 12-18, 23-29, 31 and 40 under 35 U.S.C. 102(b) as anticipated by WO98/56948 ('948). The Examiner states '948 teaches a method of detecting a *Brassica* plant containing a restorer gene using markers of bin 2 but not of bin3. However, as amended this claim is not anticipated by '948. '948 does not teach the DNA fragment comprising a different recombination event than the *Brassica* plants Lutin, P209001, P97838, P97839 or P209002. Claim 12 and its dependent claims 13-18 are as amended in condition for allowance and the Examiner's allowance is requested. Claim 23 as now amended is not anticipated as it is not taught in '948 that the line has stability, like the claimed recombinant event of the present invention. Claims depending from 23 are also

not anticipated. Claim 31 as amended to clarify the different recombination event from the prior art teachings and dependent 40 as amended are also not anticipated by '948.

The Examiner is alleging that partial homology in the 102 argument is as little as two base pairs. This position is not supportable or logical. The position would make most any genes homologous. This is not how homology is used in by the person of ordinary skill in the art. The Examiner cannot be his own lexicographer. The ordinary usage of language is the appropriate definition.

The Examiner in the 103 arguments indicates that claims 12-18 and 19 and 22, 23-29, 31 and 40 are obvious to one of ordinary skill in the art. The Examiner states that '948 in light of the GenBank accession deposit by Tulsieram and further in light of Lowe the above claims are obvious. The Examiner seems to indicate that any primers or marker simply represent structural homologs of the oligonucleotides taught by Tulsieram (2003), which are 100% derived from the short base sequences expressly suggested as useful for primers for the detection of *Brassica* plants containing the fertility restorer gene, and that a biochemist would attempt to obtain alternative compounds with improved properties making the claimed primers *prima facie* obvious over the cited art. Although the Examiner does admit that the claims 19 and 22 are not taught by the prior art, he alleges that the 143 base pair teaching of Tulsieram would make these primers obvious to try.

Even if primers were obvious to try, there were unexpected results. The present invention was tested with a number of markers from bin 1, 2 and 3. However, it is clear from Table 4 of the present specification that the likelihood of success is not all that high. A number of specific markers were not capable of identifying the material of the present invention as different from other materials.

Additionally, the Pioneer patent clearly indicates that the material that is taught is does not recombine readily, so there are less markers that are useful. The Examiner's attention is drawn to the examples of the present invention. In these examples, numerous markers in the three bins were tried on the present invention. And yet a number of different markers from the bins were not useful in identifying the recombinant material of the present invention. Nor was it obvious which markers from which bins could be used to detect the recombination events in the Pioneer material, or in the invention or in Lutin. The claims as amended are not obvious.

The claims as now amended are in condition for allowance and the Applicant respectfully requests action to allow these claims. Please reconsider the claims of this application in view of this response. The applicant believes that the claims are now in condition for allowance and the Examiner's action to allow such claims is respectfully requested.

Respectfully submitted,

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Date: September 26, 2010